

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4517 & 7107 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

TRANSPEK INDUSTRIES LTD

Versus

UNION OF INDIA

Appearance:

NANAVATI ASSOCIATES for Petitioners
MR MUKESH R SHAH for Respondents.

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.K.RATHOD

Date of decision: 01/11/1999

ORAL JUDGEMENT

Rule. Mr.Shah, the learned Addl. Standing Counsel
appearing for the respondents waives service of rule for
and on behalf of the respondents.

In these two petitions, common and identical

questions have been raised and, therefore, they are being disposed of by this common judgment.

The petitioners have challenged the legality and validity of the order dated 9.6.99 and 31.8.99 passed by the second respondent herein and has prayed for a direction to quash them by filing these petitions under Article 226 and/or 227 of the Constitution of India.

The Show cause notice came to be issued in both the cases by the Superintendent of Central Excise calling upon the petitioner co. to show cause as to why the Central Excise Duty should not be levied in respect of the octroi duty paid by the consignee agent during the relevant period since the said amount was not included by the petitioner Co. in its assessable value for deduction of duty at the time of clearance of the goods.

The petitioner Co. sent replies to the show cause notice and thereafter the respondent passed the stay order directing the petitioner co. to pay up the pre deposit against the confirmed demand without assigning any reason for justifying such direction. After the writ petition in which the directions were issued to pass the reasoned order, the impugned orders are again challenged before us.

Having heard the learned advocates for the parties and considering the facts and circumstances of the case and the ratio laid down in the decision in case of Union of India and others reported in 84 (17) ELT 329 (SC), we are of the view that in view of the peculiar facts and circumstances of the case, the authority is required to be directed to decide the appeal on merits without insisting for grant of predeposited and, therefore, we have refrained ourselves from expressing any opinion on the merits. Respondent No.2 is directed to decide the controversy of the appeals of the petitioner pending before him on merits without insisting upon predeposited as early as possible preferably within the period of eight weeks from the date of receipt of the order of this court in accordance with the provisions of law and hearing the petitioners. Accordingly, these petitions shall stand disposed of without expressing any opinion on merits. Rule is made absolute to the aforesaid extent with no order as to costs.

1.11.1999. Sd/-

(JN Bhatt, J.)

Sd/-

(HK Rathod, J.)

Vyas